

Re: *John Doe v. Jonathan R. Alger, et al.*
Case No: 5:15-cv-00035-EKD (U. S. District Court, W.D. Va., Harrisonburg Div.)

Exhibit to Plaintiff's Petition for Attorney's Fees and Expenses

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

	X	
)	
JOHN DOE,)	
Plaintiff,)	
)	
v.)	Case No. 5:15-cv-00035-EKD
)	
JONATHAN R. ALGER, et al,)	
)	
Defendants,)	
)	
	X	

**DECLARATION OF MARK D. OBENSHAIN IN SUPPORT
OF PLAINTIFF'S PETITION FOR ATTORNEY'S FEES**

The undersigned states as follows:

1. My name is Mark D. Obenshain. I am over the age of 21 years. I am competent to make this declaration.

2. I have been retained to provide an opinion on the reasonableness of the hourly rates sought by the Plaintiff for the services provided by the law firm Gentry Locke Rakes & Moore LLP ("Gentry Locke") and its co-counsel Center for Individual Rights ("CIR") in support of the Plaintiff's fee petition in this matter pursuant to 42 U.S.C. §1988(b).

3. As part of this engagement, I have reviewed the Declarations of W. David Paxton and Michael E. Rosman, which are being submitted to this Court in connection with the Plaintiff's Petition for Attorney's Fees and Expenses, as well as the resumes of each lawyer and the paralegal who represented the Plaintiff in this action (**Attachments A to H** to Mr. Paxton's Declaration and **Exhibits 1 – 3** of Mr. Rosman's Declaration). I have also reviewed this Court's December 23, 2016 and April 25, 2017 decisions (Dkt. Nos. 153 and 173) and the docket sheet for this case to gain a full understanding of the scope of this case.

4. Based on my involvement in the Harrisonburg community and the Western District of Virginia generally for more than 29 years, I am familiar with the rates generally charged by lawyers in this market. In my experience, those rates for lawyers with 30 or more years of experience run from \$200 to \$400 per hour depending on the nature of their practice, and for more junior lawyers, the hourly rates run from \$160 to \$300. When I charge an hourly rate for work that I perform, I use an hourly rate that ranges from \$350 to \$400 depending on the nature of the case.

5. This case, a civil rights action seeking only equitable relief from James Madison University ("JMU") officials by a student who was suspended based on a finding that he had engaged in sexual misconduct, is not the kind of case many lawyers will take against a state university regardless of their location, but this is especially true in a close-knit community like Harrisonburg.

6. Even though I have substantial experience prosecuting and defending civil rights litigation, I do not represent college students seeking to challenge disciplinary actions taken because those cases are very difficult to win and the costs of pursuing these types of cases are too high for the eventual award.

7. I am not aware of any experienced lawyers (someone with 25+ years of experience) in the immediate Harrisonburg area who make it a regular practice to accepting plaintiff's civil rights cases involving students. It is commonly known that courts are reluctant to inject themselves into litigation against colleges. For this reason these student claims are different in nature from employment claims where courts are regularly asked to judge and overturn employment decisions.

8. The lawyers I know in Virginia with the requisite skill and experience and willingness to handle a complex civil rights case involving the rights of students, are located in Richmond, Roanoke or Northern Virginia.

9. In my opinion the Plaintiff acted reasonable in selecting counsel from outside of the immediate area and based on my knowledge of and review of the resumes, I find Gentry Locke and CIR to be uniquely qualified to work on this type of case and they should be compensated at the reasonable rates requested.

10. I am also of the opinion the lawyers of Gentry Locke and CIR should be compensated for their services in this case at rates that are more common in larger metropolitan areas like Roanoke, Richmond and Alexandria, rather than Harrisonburg. In this regard, I am aware that in a very similar case, *Doe v. Rector and Visitors of George Mason University*, 2016 U.S. Dist. LEXIS 80847 (E.D. Va. June 21, 2016), Judge Ellis approved hourly rates for associates of \$245 to \$325, and partner rates of \$385 to \$445.

11. I have several reasons for this opinion. First, civil rights litigation involving constitutional rights of students is one of the more complex and evolving practice areas, and the lawyers at Gentry Locke and CIR lawyers have both the requisite knowledge, skill and years of experience with civil rights litigation to handle this type of case successfully. Further, for the reasons stated above, these student cases are undesirable cases which involve considerable risk, and small firms are often unable to take these cases which often must be pursued on a contingent fee arrangement.

12. In this case, the highest rates sought for any of the Plaintiff's attorneys is \$400 for Cynthia D. Kinser, the retired Chief Justice of the Supreme Court of Virginia, a practitioner with more than 40 years' experience (whose current rate is \$525/hour), Mr. Paxton with 37 years of

experience is requesting \$375/hour (although his current rate is \$425/hour) and Mr. Rosman and Mr. Haley (who played a limited role), who each are requesting an hourly a rate of \$350. All of these hourly rates are reasonable for this type of case and are consistent with the rates charged by the experienced litigation attorneys who regularly practice within the Harrisonburg market.

13. As for the other rates being requested for the lawyers at Gentry Locke (Mr. Lugar (\$260), Ms. Murchison (\$200), Mr. Stephenson (\$170) and Mr. Tobias (\$170)) and at CIR (Ms. Scott (\$300) and Mr. Hajec (\$260)) I find these rates to be reasonable given the experience of the attorneys involved and are in line with the market rates for these services. Additionally, given the 26 years of experience possessed by Ms. Bates, the rate of \$125/hour requested for her is a reasonable rate.

14. Given the complex nature of this case, the undesirability of this litigation, the experience and skill of the lawyers involved and the comparison of rates recently awarded in this Court, the hourly rates charged by experienced Harrisonburg-based attorneys for complex litigation matters, as well as the hourly rates approved in *Doe v. George Mason*, I am of the opinion that all of the hourly rates requested for the Gentry Locke attorneys (\$170 - \$400), for the CIR attorneys (\$260 - \$350), and the \$125 requested for the paralegal Ms. Bates are reasonable for this market.

GENERAL QUALIFICATIONS OF DECLARANT

15. I am a member in good standing of the Virginia State Bar, as well as the bars of various federal courts. I have been counsel of record in more than 1,000 federal and state civil cases in the courts of Virginia, Illinois and New Jersey. I have represented a wide range of clients ranging from individuals to public officials, governmental bodies and corporations.

16. I obtained my law degree from Washington & Lee University School of Law in 1987 and was admitted to the Virginia Bar that year

17. Since entering private practice in 1987, I have focused my practice on federal court litigation, employment, civil rights litigation, commercial, probate and tort litigation.

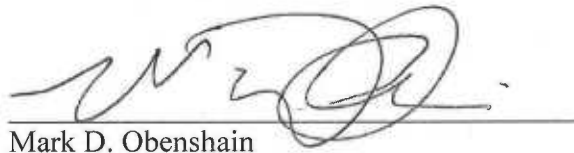
18. A copy of my detailed curriculum vitae is **Attachment A**.

19. A significant portion of my practice has involved contingent fee and statutory fee-shifting litigation under federal law. I regularly practiced in the area of civil rights litigation from 1993 until approximately 2005.

26. I have litigated civil rights cases under of various statutes in Virginia. I have handled civil rights claims in the cases involving public employment, education (involving the rights of teachers, administrators and students), speech, and public safety issues,

I provide this information under penalty of perjury and pursuant to 28 U.S.C. §1746.

Executed this 16th day of May, 2017.



Mark D. Obenshain

MARK D. OBENSHAIN

Attorney at Law

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PROFESSIONAL EXPERIENCE

2014 to Present	Obenshain Law Group, PC <i>President</i>
2014	Lenhart Pettit <i>Shareholder</i>
2006 to 2013	Lenhart Obenshain <i>Shareholder</i>
2002 to 2006	Keeler Obenshain <i>Shareholder</i>
1987 to 2002	Warton, Aldhizer & Weaver, PLC <i>Associate 1987-1991</i> <i>Partner 1991-2002</i> <i>Executive Committee 2000-2001</i>

EDUCATION

- Washington and Lee University School of Law, Lexington, Virginia, J.D. 1987
- Virginia Tech, Blacksburg, Virginia, B.A. Economics, 1984, B.A., History 1984

ADMISSIONS

- Virginia
- U.S. Supreme Court
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Eastern District of Virginia
- U.S. District Court for the Western District of Virginia
- U.S. District Court for the Northern District of Illinois

RECOGNITIONS

- AV Preeminent Peer Review Rated, Martindale-Hubbell
- Selected for Inclusion in The Best Lawyers in America, Commercial Litigation, 2006-2014

- Fourth Circuit Judicial Conference, Permanent Member
- Selected to “Legal Elite,” Civil Litigation, Virginia Business, 2001-2012
- Selected to “Virginia Super Lawyers,” Super Lawyers, Thomson Reuters
 - Business Corporate, 2006-2008
 - Business Litigation, 2009-2013

PROFESSIONAL INVOLVEMENT

- Virginia State Bar
- Harrisonburg-Rockingham Bar Association
- Virginia Association of Defense Attorneys
- Virginia Trial Lawyers Association
- American Association for Justice
- Fourth Circuit Judicial Conference (permanent member)
- Boyd-Graves Conference (2003-Present)

PUBLIC SERVICE

- Candidate for Attorney General of Virginia (2013)
- Senate of Virginia (2004-Present)
- Chairman of Senate Courts of Justice Committee (Present)
- Governor’s Commission on Government Reform (2010-2013)
- James Madison University Board of Visitors (1995-2003)
- Mercy House, Inc. Board of Directors (1993-2004)
- Harrisonburg Rotary Club, former Director, Member (1989-Present)
- Governor’s Commission on Citizen Empowerment (1994-1995)
- Governor’s Advisory Commission on Welfare Reform (1995-1997)
- Virginia Sheriff’s Association, Legislator of the Year 2008
- Virginia Association of Commonwealth’s Attorneys, Champion of Justice Award 2011
- Virginia Farm Bureau, Legislator of the Year 2012

FAMILY

- Married to Suzanne Speas Obenshain
- Children, Anne Tucker and Sam